HUNGARIAN PUBLIC POLICY IN RELATION TO ITS CRIMINAL JUSTICE SYSTEM

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1. The historical development and perspectives of criminal sanctioning in the public policies of socialist countries

At the beginning of the 20th century, the classical philosophy of punishment in Western Europe underwent a crisis. Repressive punishment, intended to be proportionate with the crime committed, proved to be an ineffective deterrent against crime. This was particularly true in the cases of recidivists and juvenile offenders. Consequently then the contemporary concept of fairness and faith in just retribution were shaken. New philosophical and sociological ideas entered public thinking and it was realized that the increase in the crime rate stemmed from contradictions in the socio-economic power structure. The overwhelming majority of offenders belonged to the lowest social strata who were so negatively affected by the great forces of developing capitalism. It was the malfunctions of this development (unemployment, lack of social welfare and health programs, etc.) which forced this lower strata to the fringes of society. When these new causes of crime were acknowledged it seemed, in the light of non-determinist philosophy, the search for proportionality and justice in the spheres of criminal responsibility became more and more illusory. The school of sociology, which emerged as an alternate philosphy, unfolded a banner bearing the old Aristotle thesis, „to treat unequals as equals, is the greatest injustice". The determinist responsibility-concept of the new trend, with its conceptions about the social nature of crime, and corresponding criminal policy, especially the special preventive protective system, provided far greater possibilities for a socialist policy, then taking shape, than the theory of classical responsibility and system of institutions did. In Western European conntries, thies new concept of criminal-policy managed initially to break through the barriers of the classical system to enter into practice with juvenile and recidivist offenders. Early experiences with these two categories of offenders were favourably received in Western European countries.

Subsequently, the first socialist state, the Soviet Union, born in revolution, adopted the determinist responsibility concept as a basis for its earliest criminal policy. „The thesis that the offender is the product of the social

milieu and that his actions or motives depend neither on him, nor on his 'will' is for us, axiomatically deterministic." (Kozlovski, 1918.) Criminal responsibility has been focussed on the perpetrator himself, his dangerousness to society, while the offense served only as legal grounds for the criminal proceeding. Criminal legal consequences, however, were to be adjusted to the personal characteristics of the offender. Accordingly, the purpose of the punishment was to ensure the defense of society, through the prevention of further crime. They wanted to accomplish this by differentiated means, by court admonition, reformatory and educative work or by the deprivation of the offender's liberty thus preventing the commission of another crime. According to this concept, criminal consequences have general educative and deterrent effects on non-criminals, though perhaps unstable members of society. (Menysagin, 1951.) After having based the system of responsibility on this ideology, the Basic Principles, issued for the criminal legislation of the Soviet Federal Republics in 1924, pushed guilt into the background and, instead of punishment, proclaiming the criminal law to be „measures for the protection of society." Three types of measures were mentioned: reformatory, remedial sanctions, and sanctions of special education for the defective. For extraordinarily exceptional cases, there remained capital punishment. (Menysagin, 1951 and Sargorodsky–Smirnov, 1957.)

In the first half of the 1930s, the concept of the repressive character of the criminal law began to gain strength. Amidst efforst at economic and social transformation, isolated from the outside world, the Soviets held the view that under the circumstances of the socialist society, punishment must be of offensive character, "a weapon in the fight against crime". At the same time, punishment as a consequence of criminal behaviour, had to express reprehension against crime. All previously mentioned measures taken on behalf of the defense of society, however, were silent on the idea of social defense. (Sargorodsky, 1960.) The accentuation of reprehension and condemnation were necessary both for special and general prevention. There emerged a new power with a new political system; proprietorship had been transformed; there had been created objective conditions for distribution of wealth according to work, and efforts were made to mobilize the most disadvantaged strata of society in a positive direction. With criminal sanctions reflecting the majority's condemnation of a minority criminals deliberately opposing society, the socialist criminal policy thought to exercise power, too. At the same time, however, Soviets did not give up the reformatory aim of punishment. A 1938 decree on the Soviet judicial system specified that punishment and education were linked. "The Soviet court is not merely meting out punishment, but it also aims at reforming and re-educating the offender." (Horváth, 1981.) Historically, this was the first socialist source of criminal law to explicate the complex aims of punishment. More or less, it continues to be embodied in current concepts of socialist criminal responsibility. Later, this general definition of purpose of criminal law has, for countries in different stages of their development, been given different interpretation in various socialist nations. The emp-

hasis on the repressive character of punishment, now and then overshadowed the reformatory and re-educational aspects. The system of sanctions and their implementation, too, developed differently, until the prevailing systems and trends recognizable today, were established. At the same time, the scientific conception about the nature of the crime, became more and more dominant. *In the socialist theory, actions requiring criminal sanctions, have been increasingly reserved for behaviour judged to be dangerous to society. Crime stems from the contradictions within society, threatening the existing socio-economic-political order.* All this meant a new scientific stand against the modern bourgeois sociology, which, while admitting the social determination of crime, denied its correlation with the existing and historically determined basic structure of society. Also it meant a position against the formalist trend in sociology, which denied that social effects are in herent in the substance and contents of the crime and, while it failed to recognize its danger to society, it considered crime, simply as an infringement of norms, or as an abstract "anti-social behaviour". The interpretation of crime as a social symptom, opposed to such a psycho-genetic theory which considered crime to be a "manifestation of the special dynamism of psychomechanisms". According to the socialist concept, crime is an activity which has the same structure as any other volitonal action. (Szabó, 1961.)

The concept concerning the social nature of crime, might have, in principle, led to a deterministic philosophy for criminal policy, in which, reprisal might have continued to be denied a place. The fact that subsequent development deviated from this trend (though it followed it roughly) as an ultimate goal only, can be explained by several reasons. This question of policy leads us back to the socio-political influence of criminal legislation. Criminal law legislation required that anti-social conduct, dangerous to society, be identified and criminal sanctions applied. (Kulcsár, 1961.) This means two things. Criminal law is of a "secondary and follow-up nature" in the sense that everything protected by criminal law, exists in other spheres of social life; thus, criminal law makes a selection of values to be safeguarded as determined by existing power-relations. (Király, 1981.) In other words that political considerations are being used to defend society, is a highly important question, a question of guarantees, directly related to the basic civil rights of the citizen. Criminal law cannot be the means either of arbitrariness or of ‚ad hoc' judgement of values. To be able to create permanent security and to prevent anarchy, criminal law must have comparative stability and generalizability. For this reason, the law represents actions against defended values, dangerous actions circumscribed in an abstract way, which has become the basis for criminal responsibility and the penal consequences which ensue. "Punishment must be finite to be real and must be circumscribed in accordance with certain legal principles, to be just. The task is to make punishment to become an actual consequence of the crime. The one punished must realize that punishment is an inevitable consequence of the crime committed, thus the one punished must see his own action. The limit of the punishment thus, must be the limit of his action." (Marx, 1957.)

In this sense, in socialist criminal philosophy too, criminal legal consequences developed from the principle of responsibility proportionate to the offence. The repressive character of the punishment continues to be expressed in the legal practice since the person is being punished on the basis of a criminal act committed in the past, proportionate to the dangerousness of the offence itself. Still, the use of the repressive element against the offender is not antagonistic with the determinist concept, since both the prospect of duress and the duress implemented have a mind framing effect, supposing of course, that these are accepted as just and equitable by both the offender and public opinion.

The use of the repressive element is, at the same time, a tacit avowal of the fact that, at present, there are not yet such scientific results at the disposal of socialist criminal philosophy, which are fit to replace the existing system. Sciences concerned with Man, failed, up to now, to come forward with any such real alternatives that would secure, with protective measures, the defence of the society. Neither can these sciences offer any means which would make the diagnosis and subsequent treatment of people with an inclination to crime, possible. This is one of the reasons why socialist criminal policy cannot foresake the crime-proportionate responsibility system, which provides guarantees and comparative legal security. *Accordingly, an action, dangerous to society, continues to be at the centre of the socialist criminal responsibility. Criminal consequences, first of all, must be adjusted to this.*

All this however, does not mean that the personality of the offender or the objective and subjective causes of the crime are to excluded from consideration. Nor does this mean that there are no possibilities for re-socialization in theory or in practice, since the main aim of the punishment remains the protection of society, and this cannot be accomplished without special prevention. The prevention of recidivism can in the majority of the cases be achieved by the expression of society's outrage, i. e. by repressive punishment. But in the case of a comparatively large number of offenders, efforts must be made to control dangerous personal characteristics. This can be realized in the framework of punishment proportionate to the crime, for instance by deprivation of liberty. Criminal policy also permits even "dangerous" acts to be dealt with through attempts to influence the offender's character. An example is the juvenile justice system which primarily aims at re-education. Within a differentiated criminal responsibility system, there is also possibility to employ additional measures of treatment of those deemed to be of special dangerousness to society. Such measures are, for instance, preventive detention for dangerous recidivists, or parole supervision during after-care.

As it can be seen from the above, a highly differentiated sanction-system is needed in order to achieve the complex aim of punishment. In certain cases it is the repressive element, while in other cases, it is the education or complex resocialization, which gots prominence.

In accordance with the above mentioned highly complex ultimate, aims, the sanction systems of socialist countries, developed according to different

historical traditions, in different ways. In those countries, where at the turn of the century, the Farnz List's school had a strong influence on criminal policy, the sanction system was separated into punishments (principal or supplementary) and measures. As it is known, punishment intentionally wanted to be a *malum*, while measures (either security or educative) served special prevention first of all. (Vámbéry, 1913.) Such trends could be seen in the systems of the criminal legal consequences of Hungary and Slovakia, later Czechoslovakia. There are socialist countries, where this was the traditional sanction system, but has subsequently been transformed and enriched by legal consequences aiming at special prevention and resocialization. Examples are the system of criminal responsibility in Poland and Bulgaria. Although protective measures are known in these countries, they contain treatment of a remedial character for offenders who are not accountable for their actions, or offenders with limited liability, or against alcoholics and drug addicts. Finally, there are also systems, for instance that of the GDR, where the expression of "punishment" has been replaced by the term "measures implemented in the course of criminal responsibility". These include punishment in the traditional sense of the meaning and also measures of an educative or remedial character. Today, however, these differences no more signify any basic difference either in the conception or in goals of the punishment or in legal trends.

In the socialist countries, the criminal sanctioning systems have undergone a highly differentiated development. Deprivation of liberty however continues to be the centerpiece of penal sanctions. There is a general tendency to limit the application of short-term imprisonment, thereby limiting the absolute number of prisoners. This is being achieved partly through the wide application of suspended prison terms and probation (Karpec, 1978) and, partly by the introduction of punishments which do not involve actual deprivation of the liberty: only a limitation of liberty. (Skupinski, 1980.) The application of supplementary punishments as principal punishments e. g. interdiction from driving a motor vehicle as a principal punishment, has gained importance. With the introduction of the day-fine, for instance, there is a similar tendency in the development of the system of fines. Similarly, there is a trend to make the application of reformatory and educative work more effective. In order to promote the increase of the effects of resocialization upon the deprivation of liberty, and, to decrease the absolute period of punishment, significant efforts are being made to widen the legal scope of parole. (Zlobin, Kelina, Jakovlev, 1978.) In the socialist countries capital punishment is meted out in extraordinary exceptional cases only.

Considering the character of the offence and the character of the personality manifest in the former life of the offender, in the case of a significant majority of the offenders, education and resocialization is needed. This, depending on the punishment meted out, can be realized inside of institutions or outside. In the former case, such measures are taken which limit liberty. These are enforced by rules of behaviour and, if need be, probation is ordered, or some similar measures, for example the patronage by

the workplace or by workmates or, patronage by the place of domicile. Patronage is being assisted by full-time probation officers and volunteers. A significant part of medium and long-term imprisonment is followed by after-care. Here, the point of departure is that even if ideal prison conditions were assumed, the best that can be done is to create *subjective conditions for reintergation*. Even under optimal conditions, help is needed to create *objective conditions too, for reintegration into the society*; to secure job and place of domicile, among others. Socialist penology, at the same time, also reckons with the possibility that the desired aim cannot be reached during the course of imprisonment, because of the harmful effects of prisonization. Release from prison is frequently followed by restrictions of liberty, which are aimed at the prevention of recidivism.

Resocialization in any form of punishment – as agreed upon by scholars of criminal sciences of the socialist countries – *is being done to prevent recidivism*. Neither the total transformation of the personality of the convicts nor the restructuring of the moral values, can be considered to be realistic aims. (Karpec, 1978.) Resocialization is realistically sought through education and socio-psychology programmes. These, in general, are aimed at filling the gaps in the process of socialization, thus for instance, making the convict complete his schooling, providing him professional training or favourably influencing his work habits, etc. *In the socialist countries, it is the right as well as the obligation of the convict to work, while serving the sentence*. Work opportunities in the penitentiaires correspond to the technical and legal conditions of work outsied the prison with wages corresponding to outside prevailing rates. In the past years, efforts to subordinate work to education have been gaining ground. (Györgyi, 1979.) Psychiatric treatment, psychotherapy or forced treatment are applied in the penitentiaries in exceptional cases only, at the decision of the court and even then, in the majority of cases, only as supplementary measure instead of punishment intended as remedial measures.

Today, in the socialist countries, (there is) no one disputes the fact that the means of the criminal law are successful in only a limited extent in the fight against the many-fold social problems and contradictions reflected in crime. It would be a naive to think the criminal law is able to change the effects of the forces of economy, society, or of social processes. "Criminal law here can only do what a dam can do againts flooding, it can hold it within the banks, it cannot however stop it." (Király, 1981/A). Society must recognize and avow its own responsibility. Such comprehensive economic, socio-political and education policy plans are needed which are able to decrease deviant behaviour, including crime. Consequently, a primary precondition of further development is the intensification of the effectiveness of socio-political programs. (Kudrjavcev, 1982.)

The development of the penal sanctions can, in the narrower sense of the meaning, be outlined as follows. First of all, *there is need to further differentiate between the punishments that can be meted out* and, there is need to introduce such new forms of punishments, which do not entail social isolation for the convict. Resocialization programs must be increased

during the period of deprivation of liberty. To this effect, there is a need for a more differentiated system of institutions, better adjusted to the real needs of the convicts. In this regard, it is inevitable to explore both the objective and subjective causes of offences, at all the stages of the procedure. Kudrjavcev summarizes this as follows: "We must organize the constant psychological diagnosis of the personality, to explore the psychological characteristics, living circumstances, needs and range of interests of the individual, which in the course of resocialization and re-education, might be used as a field of influence" (1982.). The system of criminal sanctions has been undergoing a significant change; *special preventive effects has come to the fore*, with resocialization as the primary means. In those national legal systems, *where punishments and measures are separated, the dividing lines are growing indistinct*, and now overlap both in content and aim. (Horváth, 1981.) As András Szabó writes, the domination of the law-centric conception which considers the infringement of the norms to be the substance of the crime, is slowly coming to an end. The new concept replacing the formalist normativist concept, considers the infringement of the existing norms as one of the forms of manifestations of the conflicts between man and society. Accordingly, the social reactions regulated by the law change too: *the measures aim, first of all, at the settlement of the conflicts*. Legal means are becoming the framework for conflict solving programmes of actions, while penal sanctions are turning into measures with positive programmes ceasing to be exclusively repressive sanctions, which in the past, in the overwhelming majority of the cases, have meant negative programmes only. The concept of prevention is increasingly gaining ground. (1966.) Punishment of a repressive character, however, can be left behind only if we are able to differentiate in accordance with the character of the presonality with the aim of preventing recidivism. This differentiation, in accordance with the character of personality, can be solved only with a parallel development in science, focussing on Man, and with the introduction of experimental methods. This is the only way to avoid anarchy, arbitrariness, or unscientific approaches in criminal practices. There are preconditions for the social, economic and political development of the criminal policy of the future. For my part, I would put the creation of scientific methods on an equal footing with the latter.

2. Penal sanctions and their implementation in the Hungarian criminal policy

The sanctioning system Hungarian society inherited after the Second World War had been a *conservative system* by European standards. The first Hungarian criminal code had, since its birth in 1878, been based on classical principles. Reformist efforts started right after the code entered into force – chiefly under the influence of the schools of sociology. Following several amendments, by the end of the 1920s, conditions developed for a more differentiated system of responsibility. The range of the sanctions applicable in the cases of offenders of lesser offences has been enlarged

by the possibility of suspension of punishment. In oder to educate vagrants to work, the institution of the workhouse was created, entailing indeterminate loss of liberty. In order to achieve a stronger defence of society against habitual criminals, preventive detention centres were introduced again with indeterminate loss of liberty. The most progressive legal form, beyond doubt, was the creation in 1908, of special criminal responsibility provisions for juvenile offenders. Such amendments to the criminal law had undoubtedly been, inspired by those seeking to reinforce the effects of special prevention. When such reforms came to an end in 1928, the remaining system was still basically conservative with a comparatively small number of types of criminal sanctions, as Hungary entered onto the path of fascism. (Király, 1981/B.)

In the course of the period, which followed the social and economic changes after 1945, some criminal sciences scholars, while getting closer to sociological concepts made efforts to outdo the school of formalistic criminal law. Social conditions, however failed to provide conditions for the realization of the so-called offenderoriented criminal law. The only product of this trend had been protective custody for the insane not liable for their offence. Such a decree went into force in 1948. (Györgyi, 1980.)

In the 1950s, it was repressive sanctions which came to the fore again. In the difficult economic situation of the post-war period and later during the years of the "cult of personality", criminological researches were not in demand. The social determination of crime as a concept could not assert itself. Punishment did not serve the education of the offender but was used as a reprisal for actions against the existing social order. The law on the General Part of the Criminal Code that went into force in 1950 reflected this fact only to the extent that it left the sanctioning system of the 1878 Criminal Code basically unchanged and as principal punishments, it continued to recognize capital punishment, imprisonment, life in prison or prison for determined term and the fine. The only preventive measures entailing deprivation of liberty were those which prescribed forced remedial treatment for the mentally deranged. The General Part introduced however, and in this respect it proved to be progressive, reformatory educative labour.

It could be considered as reformatory and educative measures replacing short and medium prison terms not exceeding 5 years. The provision of the law, which considerably widened the possibilities of suspending punishment was, too, aimed at decreasing the number of deprivations of liberty. Though it was not in the law it was used in practice to deal with the dogmatic criminal policies and the distortions of power which manifested themselves in that era. In 1952, the number of those convicted, increased to an alltime high of 144,000. This meant a 53.4 per cent increase as compared to the year of 1938. (Vigh, 1964.) Very high proportions of crimes at that time were of the economic type. Deprivation of liberty continued to be the most frequently used punishment. In 1953, for instance, 75 per cent of those convicted, were handed prison terms. Though the law provided for it, suspended prison terms were used comparatively rarely.

Between 1952 – 54, the implementation of prison terms had been suspended in 29 – 39 per cent of the cases only. Reformatory and educative work as a new type of sanction, has been applied in a narrow range of offences only. It was at its highest level in 1954, when it made up 11.4 per cent of total punishments. Between 1952 – 55, capital punishment was meted out in 14 to 19 cases annually. (Györgyi, 1980.)

By the second half of the 1950s and the beginning of the 1960s, more consolidated conditions of social development have been created for the development of criminal policies. Under better balanced economic development, social mobility and urbanization living standards gradually increased. *It was in 1961, when the first comprehensive socialist Hungarian Criminal Code was born.* Although codification work began as early as in the mid – 1950s, there were no criminological research of merit, either during the codification work or at the time of the Criminal Code's implementation. This explains the fact why the Code failed, in many aspects, to provide any realistic crime causation concepts. Up to the early 1960s, crime as a cosial mass phenomenon, has been considered to be alien to socialist social structure. The objective causes behind crime had been attributed to the socio-economic relations of capitalism, the subjective causes had been attributed to "the remnants of the capitalist way of thinking." (Kádár, 1961.)

After 1956, in the early period of consolidation following the counter-revolution, criminal sciences scholars made efforts to strengthen, first of all, the human rights in criminal law and in criminal procedure, secondly, to advance scientific research in order to counter the distortions of the criminal policy of the "cult of personality" years. (Viski, 1959, Király, 1962.) These concepts, together with its consequences in practics, inevitably resulted in the reinforcement of the classical responsibility principles and its effects are still felt in the sanctioning system of the Criminal Code of 1961. In addition to education and general deterrence, reprisal also figured among the aims of punishment. Deprivation of liberty continued to occupy the central place among the principal punishments. The general maximum of imprisonment had been set at 15 years and, at the same time, life sentences had been abolished. By enlarging the scope of measures, the new Criminal Code made an effort to create possibilities for a more differentiated system of punishment and, in this regard, it can be called progressive. In addition to introducing the concept of criminal responsibility, the new Code introduced the admonishment and coercive treatment of alcoholics. After the new Code went into force, actual practice became more balanced. The number of executions decreased (in 1971 there were only three). Deprivation of liberty, the most frequently applied type of punishment, made up nearly half of the total punishments, however implementation was suspended in every second case. In 1971 the number of those sentenced to reformatory-educative work had been around 13 – 15 per cent, and those fined, around 30 per cent (Györgyi, 1980.)

In the early 1960s, roughly at the time of the implementation of the new Criminal Code *criminology, sociology and psychology research projects were launched.* From this time on, more and more social science scholars

became convinced by the concept that the socialist industrialization and subsequent social mobility increased the number of conflicts that burst into the open in the form of deviant behaviour, including crime. When a transformation in social structure is taking place in a comparatively short time, and it effects wide strata of society, it is inevitably accompanied by an increase in crime rate. This does not mean, however, that basic changes in a society would automatically lead to increases in crime rate. Factors influencing the cultural level of a given nation also play a role as do the nation's traditions, chances of stable survival under new conditions, the moral standards of the population, as well as the remnants of former habits and morals. (Kulcsár, 1980.) *Since the period mentioned and in the light of the above, no one denies the fact that in the socialist society crime is a complex mass phenomenon which accompanies, as a rule, a nation's current period of development.* In socialist society, too, crime continued to be the price to be paid for inequalities and unequal opportunities. (Király, 1978.) Employing conscientious and effective social policies the success of the fight against crime depends on the extent to which society is able to decrease social injustice under the existing economic conditions, the political power structure and on the extent to which society can secure more equal opportunities leading to better social integration. (Gönczöl, 1982.) Initially this concept affected only a limited sphere of social polices in the course of its development. The polemics about the determinist interpretation o-responsibility first focussed on criminal responsibility in the case of juve, niles (Szabó, 1961, Vigh, 1964) later it developed into a scientific debatef embracing the entire concept of criminal responsibility. (Vigh, 1980, Szabó, 1980.) The development of the current concept was preceeded by research based on wide-ranging empirical experiences into the different manifestations of criminal offences committed by juvenile, recidivist, female and gypsy offenders; crimes against property; violence, parasitic, and traffic crimes and crimes against the national economy. The results of such research, initially addressed criminal policies only. In regards to penal sanctions experts were unanimous in their conclusions that prevention can be more effectively achieved by a wider reliance on special prevention. This in turn, presupposes the classification methods to implement resocialization. Consequently, criminal practice must pay far greater attention than ever before to the personality of the offender, to the tendency of the person's dangerousness to society and to the depth and intensity of such dangerousness. (Bócz, 1975, Gönczöl, 1980/A.) With the growth of social experiments and with parallel developments in sociology and psychology, such criminological concepts are gaining ground. This will demand more direct contacts with disciplines (outside traditional criminal policy, such as for instance with sociology and political science. This must embody the concept which does not consider prevention of crime to be the exclusive task of criminal justice personnel or polices (Vermes, 1971.) While, at the beginning this has been a scientifically supported wish only; by now it has been promoted to the status of social-policy.

If we focus our analysis onto the effects of criminal research on the actual penal sanctions and practices, we will see characteristics of parallel, reciprocal development. It is to be noted that *legislation proved to be somewhat more open towards the results of criminological research rather than sentencing practice or implementation.*

It was not long after the start of criminological research, when the first Hungarian Law Enforcement Code came into being in 1966, setting the „re-education of the convict into a law-abiding citizen" as the main aim of deprivation of liberty – not in the least due to the effect of criminological concepts. (§2, Law Enforcement Code.)

Outstanding among the supplementary provisions of the Penal Code of 1961, is statutory rule No. 9, 1974, which introduced the concept of exceptionally dangerous recidivists and decreed their preventive detention. This much debated rule has been included in the codification programme at the initiation of a couple of criminologists. (Vigh–Gárdai, 1969.) In the case of a relatively wide section of habitual recidivist, this made it possible for the courts to inflict additional deprivation of liberty of relatively indeterminate periods of time, between 2–5 years, besides the actually imposed prison term. In spite of the fact that early analyses revealed that the responsibility system of the Criminal Code of 1961 was not effective against recidivism, the majority of the criminologists opposed the introduction of the institution of preventive detention. (Vermes, 1963.;)

The criminal justice system has started to make increasing efforts, especially since the early 1970s, to limit the range of prison sentences to a greater extent than ever before. By the second half of the 1970s, in three-quarters of the total cases, criminal courts imposed punishments, i. e. suspended prison terms, reformatory and educative labour or fines, none involving deprivation of liberty. Capital punishment has been imposed in extraordinary exceptional cases only. In recent years only one on the average annually. As a result of a Presidential Council decres of the people's Republic in 1973, entitled "About the legal policy principles of the criminal justice system", criminal policy has been differentiated. The decres reflected a very progressive concept, which directly utilizes the results of criminology. It emphatically called attention, among other things, to the need for differentiation in the course of the proceedings in accordance with the crime and the degree of dangerousness of the offender to society. It offered directives concerning the types of crime and criminals to be regarded as increasingly dangerous to society under existing social circumstances. It provided for milder consideration in the case of first offenders in cases of comparatively mild offences whose previous behaviour had not been objectionable. Weighing all the circumstances, in the case of the latter type, the decree called for punishments *not* involving the deprivation of liberty.

The legal agency for the after-care of those released from prison, established in 1975, serves the interest of more effective and differentiated special prevention. This provision of the law assists the resocialization of those released from prison. The after-care agency also creates the social conditions for resocialization (accommodation, jobs). The decree also pro-

vided for the supervision and control over a limited member of those released from prison, in order to prevent a repetition of crime. This same law created the institution of the probation within the court system which continues present-day function. This means, that a complex resocialization system is now in place to help those released from prison in social reintegration. Following the creation of the 1978 Penal Code, this system has been further perfected.

Earlier partial reforms created a greater demand for comprehensive criminal law codification. Work started as early as in the 1970s, aimed at reforming the Penal Code, the Code for Criminal Procedure and the Law Enforcement Code. In this manner, the realization of a fully comprehensive concept in the sphere of criminal law policies, came within reach. *New legislation was adopted in 1978 and in 1979, respectively.*

In regard to the reform of sanctions, it can be stated that a great advance had been made towards a properly differentiated system which we believe lives up to modern scientific thinking. *The tendency of the earlier years, when the general preventive and repressive aspects were strongly enforced, has to a great extent been replaced by a new system with emphasis upon special prevention and individualization.* The basis of criminal responsibility continues to be the crime. However, in the course of the legal process, greater attention is now paid to the personality of the offender, to his conduct and life conditions preceeding the crime and to the objective and subjective causes of the crime. Accordingly, the sanctioning svstem has been differentiated as well. *New alternative punishments and measures have been introduced to further limit the scope of punishments especially affecting the deprivation of liberty.* This became necessary, because in earlier judicial practices there had been a predilection for imposing short-term sentences even in cases when the aim of punishment did not seem to justify it. In the period between 1976 and 1978, for instance, the number of prison terms below one year, made up 30 per cent of total prison terms imposed. Effective resocialization under conditions of isolation could not be realized during such a short term especially if we subtract the time spent in custody from the prison sentence itself. (The time spent in custody is always included as a credit toward the prison sentence.) At the same time, with the majority of lesser offenders resocialization behind bars is not now considered necessary. *In case of milder crimes, under the new law, sanctions which were used as supplementary punishments exclusively, can be meted out as principal punishments.* (Thus, for instance interdiction from practicing a profession or from driving a motor vehicle, can be meted out as principal punishments.) The reform of the fine system, too, aimed at widening the scope of punishments and to achieve greater individualization. *The law introduced the penalty of the so-called "day-fine"*, which had already been operating well in the Scandinavian countries, the Federal Republic of Germany and Austria (Bárd, Györgyi, 1978.) Reformatory and educative work continue to be principal punishments. The number of measures, which can be used exclusively to replace prison terms, has been widened. *Probation has been introduced for adult offenders.* It has been assumed that

in the case of lesser offences by occasional offenders, the *threat* of punishment has a greater deterrent effect than the actual prison term itself. In the course of probation, if need be, resocialization may be stressed. The Criminal Code made it possible to order probation supervision. The court has the power to order certain rules of behaviour for those on probation with compliance supervised by the probation officer. Even under the previous Criminal Code, it was possible to suspend a prison sentences not surpassing two years. The new Criminal Code in turn, provised for probation supervision for those under suspended prison terms. With this provision, the effectiveness of such punishments which do not involve deprivation of liberty, increased. The new Law provides for *forced treatment of alcohol addicts.* In cases, where the prison term is for more than six months, forced treatment of alcoholics is accomplished within the framework of a prison sentence. If the offence does not carry a prison sentence exceeding six months, the alcoholic can be remanded to work therapy treatment in a special institution, instead of a normal prison.

Both the system of prison punishment liberty and its implementation, underwent a basic reform. The general minimum of 30 days has been raised to 3 months. This, too, has been done with the intention of encouraging the application of alternatives to prison. When the Law entered into force, the Minister of Justice emphatically underlined that "deprivation of liberty should be applied only is cases where it is really justified." (Markója, 1979.) *It became clear as early as the codification era, that deprivation of liberty cannot however be made a singular or exceptional form of punishment.* "Against the more severe offences, prison continues to be indispensable and necessary. This is first of all due to the fact that it is prison which has the strongest deterrent effect of all punishments, and with its isolating function it has a security effect as well. Besides, prison provides rich possibilities of variation." (Ficsor – László, 1976.)

There are three types of institutions for the execution of prison sentences. They are the penitentiary, the common prison and the house of detention. Which of the three to be used, is decided by the cognizant criminal court. The above three differ from each other as to the extent of the isolation from the free world, the restrictive rules and thus prison life itself. The new Law Enforcement Code however provided that the civil rights and the responsibilities of convicts could be limited only to the extent the sentence or the law sets out or to the extent the exercise of such rights are not in contradiction with the aim of punishment. This, interpreted into the language of institutional life in the above mentioned institutions, means that the convict can be isolated from the outside world only to the extent necessary for the defence of society. This may be stated as the p rinciple of the least restriction consistent with social defence". (Prisoners are allowed to keep in touch with their families. Furloughs are granted too; from the common prison in exceptional cases and from the house of detention regularly. In the latter type of institution, the prisoner is even allowed to work in workplaces outside the institution.) In order to help the gradual acclimatization to the conditions of the outside life, the new law

introduced the institution of the *transitional group*. The benefit of the transitional group may be granted toward the end of the prison term, for convicts in penitentiaries and for those sentenced to prison terms longer than five years. (While in a transitional group, the convict may be granted short leaves and can be employed outside the institution, or may allowed free movement within the institution or is permitted to have unlimited contacts with a probation offiver, etc.)

The most important principle of the new law is that *the entire institution of the deprivation of liberty, together with the coordinated activity of all those participating in it, is now dedicated to the aim of the re-education of convicts*. Educational activity must obviously be suited to the educational and social level of the convict. The majority of the convicts are adults. A significant proportion of them are recidivists who have committed serious crimes. Their level of education is well below the average. Under such conditions, the basic task of a resocialization program is to make up for the gaps in elementary knowledge, i.e. elementary schooling. (Under the age of 40, elementary school is compulsory, for those over 40 opportunities are made available.) Resocialization is made considerably easier by the fact that the convicts are given training in such skills that are in demand in the free world. Depending upon the length of punishment, there are training programs for semiskilled or skilled workers. (Convicts may continue secondary or higher education studies as well.) In the course of the resocialization process, in addition to centrally organized forms of education, there are also specialized forms for the individual or groups. The purpose of these programs is to accustom the convict to forms of free life which will help him survive on the outside in a socially acceptable manner. The new law left intact the rules of employment permitting convicts to enter in industrial or agricultural work programs at prevailing wages. With the creation of prison work programs care was also taken to secure ex-convicts jobs related to what was learend during his prison stay. If need be, accommodation may be secured for him at worker's hostels.

Based on the aforesaid, it is obvious that in the case of Hungarian pentitentiaries, *we cannot talk about treatment programs in the classical sense of the concept. What is being done in these institutions can better be defined as resocialization in tune with modern criminological thought*. In our institutions, no atempt is made at the complete transformation of the convict's personality. The main task is to correct those traits which made the person unfit for integration into society and to try to get him to accept and respect the basic principles of lawful existence in society. (Vincze, 1982.) The penal instituions employ full-time pedagogists, who are assisted by one or two psychologists. Besides, teams of doctors, psychologists and teachers specialized in the treatment of the defective care for psychopathic convicts in special institutions or in separate parts of other institutions. A large number of psychopaths are incarcerated because of their addiction to alcohol and have been sentenced to forced treatment. Resocialization is augmented by parole opportunities which are widely available. Under the law, in certain cases, the test period (parole) is done under the supervision of probation

officers. (The general minimum of three months in prison must be served by all convicts. In the case of penitantiaries, parole may be granted after serving 4/5 of the sentence, while in common prison 3/4 and in the house of detention 2/3 of the sentence must be served. In the case of life terms, parole can be granted after 20 years in prison.)

The Criminal Code of 1978, created new regulations governing preventive detention centre. The law clearly defines the concept and structure of recidivism. It qualifies as especially dangerous recidivists only those, who repeatedly commit the most severe crimes. Consequently, the range of those who come under this new definition has considerably narrowed. (Excluded from this category were for instance such multiple offenders who regularly commit lesser crimes against property.) Preventive detention programs have been considerably improved to comfort with the concept of resocialization. During the time of preventive detention, convicts enjoy greater liberty than during their sentence in a prison. (For example, they can be granted short community leaves of up to 14 days, or they can be employed in workplaces outside the institution or are allowed to spend their leisure time as they prefer.) After two years, they are eligible for probation under supervision. Parole consideration is mandatory every year after two years spent in preventive detention. Preventive detention is limited to a maximum of five years.

The new Criminal Code entered into force at the beginning of June, 1979. Not enough time has elapsed since then to sufficiently draw any final conclusions concerning its actual effects. There are already certain tendencies recognizable for a comparison with its intentions. Since the new Criminal Code entered into force, *the proportion of prison sentences did not decrease, on the contrary it was slightly increased.* Prison sentences make up for somewhat more than one-fourth of the total punishments. The proportion of the comparatively short-term sentences i.e. under one year, increased from an earlier annual average of 30 per cent to 37.2 per cent in 1982. The number of suspended prison terms remained practically the same, and, the proportion of reformatory and educative work sentences decreased. The number of fines, however, decreased considerably. (In 1977, fines made up 46.1 per cent of total punishments while in 1982 it dropped to 39.6 per cent.) Thus, the introduction of new, alternate punishments and measures, did not bring about desired decreases in short-term prison sentences; it only decreased fines and reformatory-educative work sentences. In 1982, supplementary punishments implemented to replace principal punishments, made up 7–8 per cent total punishments, with probation figuring high among these supplementary punishments.

There might be several reasons behind these nondesirable tendencies. In the period past, crime rate might have developed so unfavourably that it made wide use of milder sanctions impossible. The data about the Crime rate however, does not support this assumption. For a long period, the volume of crime has hardly changed; between 1965 and 1981, it increased by only 10.6 per cent. The proportion of the offenders however, decreased by 9.1 per cent in the same period. Neither were there any essential

changes in the structure of the crime itself. More than half of crime was against property; the proportion of traffic crimes was 11 – 13 per cent, that of violent crimes 6 – 11 per cent, while crimes of economic character, 2.5 – 4.5 per cent. Between 1965 and 1981, the proportion of crimes against property decreased by 5 per cent, while traffic crimes increased by 2.5 per cent. The proportion of violent crime and crimes committed against the national economy, also increased by 5 and 2 per cent respectively. *There were no significant changes either in volume, trend or type of crime* but certain unfavourable tendencies can be seen. For example, certain types of violent crimes, like robbery, has shown a permanent increase in the last three years. *None of these changes could however justify sentencing practice which would restore prison punishment to its former leading role.*

The reasons cited in the new Criminal Code for short-term prison sentences are more obvious than those mentioned above. The Criminal Code of 1978 carried out a *certain measure of decriminalization*, i.e. it excluded, as a crime, the offence of defamation of character. (The new sentence for defamation of character carries a fine only in an administrative procedure.) Since this type of offence is no longer considered to be a crime, but an administrative offence it obviously brought a decrease in fines. The new Law makes court mitigation of punishments exceptional and declares more severe santions against recidivists. These new laws resulted in the more frequent application of deprivation of liberty.

It seems however that there are certain *differences in approach. This, in turn hinders the proper application of a differentiated system of sanctions.* It is now a precondition for efficient implementation of special prevention that, in addition to the dangerousness of the criminal action to society, the personality of the offender, his life style, and both the objective and subjective causes of the crime must be explored in the course of the criminal procedure. (Gönczöl, 1980/B.) Experiences thus far show however that prosecution authorities fail to give due consideration to the factors cited. The Ministry of Justice made a comprehensive survey to determine the obstacles to a wider use of punishments which do not entail deprivation of liberty. In the majority of the cases, according to the findings of this survey, punishments not entailing prison terms had been applied only in cases where the weight of the criminal action was very mild and where the offender's personality could be qualified as nearly "non-objectionable" without any thorough examination. The survey has emphatically stated that probation may be applied even in the case of persons with several previous convictions might not be considered "recidivists" if the conduct of the offender since the time of the last sentence served, leads to the assumption that the purpose of the instant punishment can be achieved by the threat of new punishment alone. Probation can also be ordered in the case of an offender with "objectionable" conduct, if in the period that has elapsed between the offence and the court procedure the offender gave evidence that he wants to change his basic life style. (For instance, if he volunteers for alcoholic treatment.) These efforts on behalf of the convict must then be officially reinforced by placing him under the control of probation

supervision and by presrcibing rules of behaviour for him. "For a well-grounded judgement, the court must have sufficient information at its disposal about the offender's personality, his conduct of life in general, and about his behaviour in the workplace and in his private life in particular. Procedures, in the majority of cases however, fail to explore these aspects in necessary depth. Even the report form the workplace is often missing," the survey states. (Anonyme, 1982.)

Similar shortcomings were also found in probation practice. Probation could be expected to operate successfully if the conditions it sets for offenders adequately consider both the personality of the latter and to the circumstances of the offence. Experience showed however, that neither the police investigation nor the court procedure and subsequent sentencing threw any light on these factors. Consequently, probation as means of punishment lags far behind what was expected of it. And, even when applied, the rules of behaviour are neither properly founded nor are they particularly suited to the personality of the offender. (Pécsváradi, 1982.) The exploration of the personal characteristics of the offender is a precondition for the application and effective implementation of any punishment.

In this regard, *criminal procedure forms a complex entity: information gathered at a given stage of the procedure should not merely serve as a basis for the next stage of the procedure, but should serve the general goal of the ultimate sanction as well.* Thus, in the course of the police investigation not only those facts should be gathered which help the court procedure, but attention must also be paid to the requirements of the eventual resocialization programme to be implemented in the course of sentencing. At the same time, however, prison officials cannot disregard the dangerousness of the offence to society or the evidence pertaining to the degree of the seriousness of the offence and they cannot say that as executers they have to deal with the personality only. Neither can they say thar personality factors have already played their role in earlier stages of the procedure. (That is to say, the offence itself usually reflects the character of the personality.) In this way, resocialization programmes can be used with the offender-as-a-person rather than simply inferring personality from a particular offence. Judges in the penitentiary-system and full-time parole officers must work under the guidance of the above principles. The results achieved during the implementation of the punishment must be evaluated in the light of evidence gathered by court and in the light of the characteristics of the personality of the offender. The measures to be taken to secure the convict's reintegration to society must be selected with due consideration to all these elements. (Gönczöl, 1980/B.) The foregoing can only be realized by a change in approach, namely *if all the authorities participating in the procedure come to the responsible realization of the fact that punishment must not only be just but it must also be effective.* Accordingly, punishment must be meted out and implemented in a way that leads to the prevention of a repetition of crime in the case of the offender they are dealing with. In addition to the criminal offence itself, the personality of the offender and the circumstances of the offence must be made the basis of indi-

vidualization. (Anonyme, 1982/B.) In order to bring the different approaches nearer to each other, certain practices must be changed, for example the court practice where requirements are based upon qualitative apsects almost alone. Changes are needed also in methods of criminal investigations.

I cannot, here, elaborate fully practices that followed the period of the Criminal Code's implementation. The fact that there had been experiences worthy of attention should however be noted here. Among others, there was a significant decrease in the application of preventive detention as a form of punishment. While in 1978, it has been applied in 12.6 per cent of cases to those sentenced to a minimum of two years in prison, this proportion dropped to 2.6 per cent in 1981, as a result of the new law (Anonyme, 1981/A.) In the case of juvenile offenders, similar favourable tendencies were realized. While in the period preceeding the new criminal Code, reformatory and educative measures with juvenile offenders had been hardly more than one-third of the total of cases, in 1981, it rose to 55 per cent. (Anonyme, 1982/A.)

The effectiveness of the punishment must also be considered. In the past decade, in Hungary, some outstanding research projects have been carried out on this subject. These researches have clearly shown that from the point of view of recidivism alone, one cannot draw any clear-cut consequence as to the effectiveness of prevention or punishments applied. That is to say, punishment can, at best, influence the personal character of the offender. The influence of punishment on the actual social circumstances of the criminal actor however, is far more limited. There were experiments to analyse the prisoner's will for reintegration into society and their behaviour following release from prison. In 40 per cent of the cases of those sentenced to prison for the first time, the effect of this punishment had been favourable; in 50 per cent of cases it was found to be indifferent, while in 10 per cent of the cases a new crime was committed. (Vigh, 1976.) Similar analyses had been carried out in connection with suspended prison sentences and probation. Probation under supervision for instance, proved to be effective in 99 per cent of the cases and in 95 per cent of suspended prison term cases. Similarly positive results were found with parole when applied to prisoners released either from prison or from preventive detention. The remaining term of the prison sentence had to be served in only 6.4 percent of the cases, while the temporary leave from preventive detention had to be cancelled in 13.5 per cent of the cases. (Vermes, 1982.)

The above survey of the system of the Hungarian criminal sanction policies and experiences provides a new perspective for prevention. In the light of the above, the question whether it is treatment or punishment which serves the aim of special prevention may be answered as follows: *in Hungary resocialization is realized within the framework of punishment.* All those efforts which serve the education of the offender, his reintegration into society can only be realized within a framework of crime-proportionate punishment. This concept attempts to guarantee the human rights of the offender on the one hand while it offers a reasonable defence of the

public order, on the other. Criminal law can undertake the resolve socio-political problems only if undertaken within the limitations mentioned. Criminal law policies however can prove effective only if its sanctions are supplemented with such-socio-political measures which *lack duress*, and if they help resolve such problems and difficulties which are the social source of the crime. Certain types of offences often reveal problems, the solution of which, is either impossible or is only partially possible in the course of the punishment. In such cases, either parallel with the punishment or after the period of punishment, coordinated socio-political measures are necessary. These measures however, are necessary not only to prevent recidivism, but also to put a brake on repetitive criminality. This, then leads to the need for *crime prevention in a wider, socio-political sense.* Of late, it has become more and more obvious particularly as a result of a comprehensive analysis into deviant behaviour that there are few singular social contradictions which play an exclusive or even dominant role in criminogenic behaviour. In other words, it is very difficult to differentiate between the social causes behind certain deviant behaviour forms — it is rather in the individual cases, where the differences manifest themselves.

Consequently, comprehensive socio-political measures are needed which are targeted against the actual social causes underlying deviancy as a comlpex social phenomenon and not against their individual forms of manifestation. In the case of alcoholics for instance it is the social problems of alcohol addicts that must be solved. It is nearly irrelevant here whether the consequence of alcoholism is crime or suicide. Taking another example, society must fight against the disruption of compulsory education. Here, it is similarly irrelevant whether the lack of school education might lead to a criminal career or to addiction to alcohol.

This however, does not make research into the social or the individual causes of the crime superfluous, quite the contrary it makes such efforts emphatically more important. Complex prevention program can only be called into being if there is sufficient understanding of social experience. However, a comprehensive social programme, can be successful only if it embodies a properly differentiated system corresponding to the existing conditions of society and to the level of development of the social sciences. Prevention and sanctions have to dove-tail in the community through operating agencies. In the framework of a social system, national legislation could be created which would very clearly specify the tasks of the given types of social institutions. (Gödöny, 1980.)

Finally, there emerges the question: *is there any criminal law philosophy and sanction system, which is good or bad, in the absolute sense of the meaning?* There is no clear-cut answer to this question. We must realize the fact that criminal policies and a system of legal consequences are of a follow-up character. The question can be posed only in this form: to what extent do criminal policies and criminal system live up to the economic, social and political requirements of the era, and to what extent do they apply the results of up-to-date scientific findings in the interest of achieving their aims. There were times when criminologists were inclined to assume

treatment and resocialization as absolute values. Where this was done, the system was seen as correct and useful. Since then we have realized the fact that it is not the philosophy of the criminal policy or the quality of the measures which decide wheter the criminal policy system is effective or not. (The success of resocialization program depend on conditions after release from prison; whether society is able to secure the basic conditions of life for an ex-convict or whether he must reckon with becoming a jobless outcast.)

In regard to social conditions, the philosophy of punishment and the sanctioning system, the socialist countries considerably differ from the developed western nations, despite the acceptance of the two New York Convenants of 1966 on human rights – including norms of criminal law – and introduced by all of the socialist countries and by most of the developed western countries. The latter now seem to be turning back to neoclassical criminal philosophy but at the same time they also utilize those aspects of the treatment ideology which look promising under their circumstances. The socialist countries, after a short detour, have been following the classical system and in the last 15 years they further developed the methods of resocialization. Thus, at this historic stage, there can be highly useful exchanges of experiences between the experts of the two group of nations having different social systems.

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LES RAPPORTS ENTRE LA SOCIALPOLITIQUE HONGROISE ET LA POLITIQUE CRIMINELLE

par

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L'auteur traite les caractéristiques de la socialpolitique criminelle hongroise sous leur aspect historique. Il constate que le jugement de la mesure de la responsabilité pénale dans les pays socialistes s'adapte avant tout au comportement du délinquant, dangereux pour la société. Néanmoins on voit que la tendance devient de plus en plus évidente où la réalisation de l'influence préventive spéciale se renforce au moyen de la différenciation des peines applicables, au moyen de l'introduction des nouvelles et des récentes formes de peines. La prétention de la large application des peines n'entrainant pas la privation de liberté s'accroît. Dans le cadre de la privation de liberté à exécuter un accent de plus en plus grand se met sur la résocialisation. Ainsi les conditions sociales et politiques favorisent de mieux en mieux la réalisation du programme de résocialisation adapté à la personnalité du délinquant. Mais pour sa réalisation — justement dans l'intérêt de la protect mentaux des citoyens — il faut également créer les conditions scientifiques.

Néanmoins on serait naïf de croire que le droit pénal pourrait changer l'influence des lois sociales et économiques apparaissant dans la criminalité, les processus objectifs ayant leur rôle dans la reproduction sociale de la délinquance. La société doit connaître et reconnaître de plus en plus sa responsabilité. Les programmes généraux d'économie, de politique sociale, de politique criminelle doivent être destinés à l'atténuation de l'influence des contradictions sociales, ce qui permettra uniquement de diminuer les formes de comportement déviant et de cette façon la criminalité.

СВЯЗЬ МЕЖДУ ВЕНГЕРСКОЙ СОЦИАЛЬНОЙ ПОЛИТИКОЙ И ПОЛИТИКОЙ УГОЛОВНОГО ПРАВА

Д-р КАТАЛИН ГЕНЦЕЛ

Особенности социалистической политики уголовного права рассматриваются автором с исторического аспекта их развития. Далее устанавливается, что оценка степени уголовной ответственности в социалистических странах прежде всего зависит от степени общественной опасности совершенного деяния. Однако все очевиднее тенденция, в которой усиливается специальное превентивное влияние наказаний путем дифференциации назначаемых наказаний и введения все более новых форм наказания. Растет потребность в более широком применении форм наказаний без лишения свободы. А в области лишения свободы все больший упор делается на ресоциализацию. Таким образом, общественно-политические условия все в большей мере благоприятствуют осуществлению программы ресоциализации, приспособленной к личности совершающего преступление.

Однако для этого в интересах защиты основных гражданских прав необходимо создать и научные условия.

В то же время наивно было бы считать, что с помощью уголовного права можно было бы изменить влияние экономических законов, всплывающих на поверхность в преступлении, а также объективные процессы, играющие определенную роль в общественной репродукции преступления.

Общество все в большей мере должно знать и осознавать свою ответственность. Общие экономические, социально-политические, культурно-просветительные программы должны быть нацелены на смягчение влияния общественных противоречий, помоту что только таким образом можно добиться сокращения форм поведения, не соответствующих общественным законам в том числе и сокращения преступности.